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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,006

10/16/2003

Thomas William Brock

18424

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23556 7590 03/21/2007  
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EXAMINER

TENTONI, LEO B

ART UNIT

PAPER NUMBER

1732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/687,006

Applicant(s)

BROCK ET AL.

Examiner

Leo B. Tentoni

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1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-9, 14-18 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9, 14-18 and 21-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-3, 5-9, 14-18 and 21-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6, 16-19 and 21-24 of copending Application No. 10/325,140. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the reasons of record.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 1-3, 5-9, 14-18 and 21-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/694,420. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-3, 5-9, 14-18 and 21-26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,709,623 B2 in view of Antonacci et al (U.S. Patent 5,244,724 A). Claims 1-6 of U.S. Patent 6,709,623 B2 recite a process of, and apparatus for, making a nonwoven web as claimed, except for deflecting the fibers with a non-contacting deflecting device which comprises an air jet deflector (note that the claims recite deflecting the fibers with a non-contact deflecting device which comprises an electrostatic device and a plate), which is taught by Antonacci et al (see the entire document, in particular, col. 7, lines 56-

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66) and such would have been obvious to one of ordinary skill in the art at the time the invention was made in claims 1-6 of U.S. Patent 6,709,623 B2 in view of Antonacci et al principally because Antonacci et al teaches the equivalence of non-contact deflecting devices comprising an air jet deflector device or an electrostatic device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35

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U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-3, 6, 7, 9, 14-18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,244,753 A in combination with Antonacci et al (U.S. Patent 5,244,724 A).

8. GB 1,244,753 A (see the entire document, in particular, pages 1-9; Examples) teaches a process of, and apparatus for, making a nonwoven web as claimed, except for deflecting the fibers with a non-contacting deflecting device which comprises an air jet deflector, which is taught by Antonacci et al (see the entire document, in particular, col. 7, lines 56-66) and such would have been obvious to one of ordinary skill in the art at the time the invention was made in GB 1,244,753 A in view of Antonacci et al principally in order to manufacture a nonwoven web having a uniform basis weight.

9. Claims 1-3, 6, 7, 9, 14-18, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weng et al (U.S. Patent 5,762,857 A) in combination with Antonacci et al (U.S. Patent 5,244,724 A).

Weng et al (see the entire document, in particular, col. 2, line 56 to col. 4, line 52) teaches a process of, and apparatus for, making a nonwoven web as claimed, except for deflecting the fibers with a non-contacting deflecting device which comprises

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an air jet deflector, which is taught by Antonacci et al (see the entire document, in particular, col. 7, lines 56-66) and such would have been obvious to one of ordinary skill in the art at the time the invention was made in Weng et al in view of Antonacci et al principally in order to manufacture a nonwoven web having a uniform basis weight.

10. Claims 1-3, 6, 7, 9, 14-18, 25 and 26 are rejected under 35 U.S.C. 103(a) as being obvious over Haynes et al (U.S. Patent 6,709,623 B2) in combination with Antonacci et al (U.S. Patent 5,244,724 A).

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned

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by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(1)(1) and § 706.02(1)(2). Haynes et al (see the entire document, in particular, col. 7, line 16 to col. 10, line 2) teaches a process of, and apparatus for, making a nonwoven web as claimed, except for deflecting the fibers with a non-contacting deflecting device which comprises an air jet deflector, which is taught by Antonacci et al (see the entire document, in particular, col. 7, lines 56-66) and such would have been obvious to one of ordinary skill in the art at the time the invention was made in Haynes et al in view of Antonacci et al principally in order to manufacture a nonwoven web having a uniform basis weight.

#### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-3, 5-9, 14-18 and 21-26 have been considered but are moot in view of the new ground(s) of rejection.



**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo B. Tentoni whose telephone number is (571) 272-1209. The examiner can normally be reached on Monday - Friday (6:30 A.M. - 3:00 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina A. Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*Leo B. Tentoni*

Leo B. Tentoni  
Primary Examiner  
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